IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No ——

ELBA W. VAUGHN, Widow of Decedent,
Clarence W. Vaughn - - - - - - Petitioner

versus

WILLIAM JOHN HUFNAGEL, Executor
of the Estate of Clarence W. Vaughn,
WILLIAM JOHN HUFNAGEL and FLORENCE F. HUFNAGEL, His Wife,
DAISY P. BURDON,
CHESTER E. VAUGHN - - - - - Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

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WESTERFIELD-BONTE CO., INC., 619 W. KENTUCKY, LOUISVILLE, KY.

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No ——

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v.

WILLIAM JOHN HUFNAGEL, Executor of the Estate of Clarence W. Vaughn,
WILLIAM JOHN HUFNAGEL and FLORENCE F. HUFNAGEL, His Wife,
DAISY P. BURDON,
CHESTER E. VAUGHN - - - - *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

To the Honorable, the Chief Justice and the Associate Justice of the Supreme Court of the United States of America:

The petitions of Elba W. Vaughn, Widow of the Decedent, Clarence W. Vaughn, for a writ of certiorari to review a judgment of the Court of Appeals of Kentucky made and entered by said court on the 21st day of May, 1971, a timely petition for rehearing was denied on the 17th day of December, 1971, copy of which is hereto appended, respectfully shows to this honorable court:

OPINION BELOW

No opinion was rendered by the trial court.

The opinion of the Court of Appeals of Kentucky (Kentucky's highest court) copy of which is appended hereto has been reported in the South Western Reporter, Kentucky second series Vol. 473, pages 124 to 127, which affirmed the holding of the Circuit Court of Jefferson County, Kentucky, that there was no valid marriage and that the judgment denying petitioner letters of administration is correct and therefore affirmed, because the parties were transients in Ohio when and where they were married.

JURISDICTION

The judgment of the Kentucky Court of Appeals was entered on the 21st day of May, 1971, petition for rehearing denied on the 17th day of December, 1971.

No order was granted for rehearing or for extension of time in which to petition for certiorari.

The statutory provision believed to confer on this court jurisdiction to review the judgment of the court below is 28 U. S. C. Section 1257 (3).

QUESTION PRESENTED

May the Court of Kentucky deny the legality and existence of a common law marriage made in Ohio, where the common law marriage was valid, solely on the ground that the parties were "transients"?

THE CONSTITUTIONAL PROVISIONS

1. Article 4, Section 1 of the Constitution of the United States provides: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

2. The Fourteenth Amendment to the Federal Constitution provides for equal protection to all persons. The denial by the Kentucky Court of a valid common law marriage made in Ohio on the sole ground that the parties were transients at the time of the marriage is in violation of this right.

STATEMENT OF THE CASE

After prelimiary courtship in Kentucky, the Petitioner, Elba W. Vaughn, departed for Cincinnati, Ohio, where common law marriages are valid, in the company of her fiance, Clarence W. Vaughn, on July 16, 1966, with the jointly avowed intention of getting married. The couple took along their wedding outfits. Elba, when she left Louisville wore her engagement ring and when she returned from Cincinnati, in addition to her engagement ring she also wore her wedding ring. The couple arrived by automobile in Cincinnati on July 16, 1966 and registered at the Cliff View Motel in Cincinnati as Mr. and Mrs. Clarence W. Vaughn, 2319 Winston Avenue, Louisville, Kentucky (the home of the groom).

On July 16, 1966, at the Cliff View Motel, she and the decedent then and there agreed to become husband

and wife; they exchanged marital vows and the decedent presented Elba with a wedding ring to seal and complete the marriage contract and thereupon cohabited as husband and wife. On July 17, 1966, the petitioner and the decedent, Clarence W. Vaughn, left Cincinnati, returned to Louisville and lived together at 2319 Winston Avenue, holding themselves out to their lawyer, friends, church, associates and neighbors, as husband and wife and were so recognized by these persons until the time of the death of Clarence W. Vaughn on February 7, 1967.

As Clarence Vaughn's wife, Elba bought their groceries with her money, paid the balance due on Clarence's new car and nursed Daisy P. Burdon, Clarence's aunt, who was at all times during the marriage disabled by illness from taking care of herself. In addition, Elba Vaughn worked at St. Anthony's Hospital to provide an income for herself and Clarence Vaughn, who had not worked for years because of his physical inabilities, and he never held a job, other than sporadically, as a grocery delivery boy, temporary mail carrier, during Christmas rush periods, and a delivery boy for a printing firm. Elba and Clarence sent Christmas cards as man and wife and likewise contributed to the Catholic Church as Mr. and Mrs. Clarence W. Vaughn. The proof is also uncontradicted that Clarence Vaughn, who had been a Baptist all of his life and owned Bethany Baptist Church bonds of the face value of $6,000.00 at his death, quit attending that church after his marriage to Elba Vaughn and at-

tended the Catholic Church regularly with her, she being a Catholic.

When Clarence became ill, Elba nursed him day and night until he died on February 7, 1967. Elba made all funeral arrangements.

If petitioner was the wife of Clarence W. Vaughn at his death, his Will made before marriage was revoked and Clarence W. Vaughn died intestate making Elba W. Vaughn his sole heir under Kentucky Revised Statute 394.090. The Jefferson County Court held that a common law marriage had been proved in Ohio but denied the petitioner's application for letters of administration and allowed the decedent's Will to be probated, because the parties were not legally married on the sole ground that the decedent, Clarence W. Vaughn, and Elba Vaughn were transients in Ohio at the time of the marriage. (Appendix, pp. 12-13.)

STATE OF PROCEEDINGS IN WHICH FEDERAL QUESTIONS WERE RAISED

The full Faith and Credit Clause and the Equal Protection Clause were argued and raised in the Jefferson County Court, Jefferson Circuit Court and Kentucky Court of Appeals.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

This Court has held in the following cases that in the absence of any positive statute to the contrary, any marriage regularly made according to the common law is a valid marriage: Meister v. Moore, 96 U. S. 76,

24 L. Ed. 826, Maryland use of Markley v. Baldwin, 112 U. S. 490, 5 S. Ct. 278, 28 L. Ed. 822, Jewell v. Jewell, 1 How. 219, 11 L. Ed. 108, and Travers v. Reinhardt, 205 U. S. 423, 27 S. Ct. 563, 51 L. Ed. 865.

Mr. Justice Field in Maynard v. Hill, 125 U. S. 190, 8 S. Ct. 723, 31 L. Ed. 654 indicated in his opinion the great importance of marriage relationship when he said: ". . . the most important as affecting the happiness of individuals, the first step from barbarism to incipent civilization, the purest tie of social life and the true basis of human progress." To deny the right of marriage in Ohio, because the parties were transients violates Article 4, Section 1 and the Fourteenth Amendment of our Constitution. This same question was invoked as to welfare payments to resident aliens in Graham v. Richardson, 403 U. S. 365, 29 L. Ed. 2d 534, 91 S. Ct. 1848. Residence or domicile are not essential in the welfare case nor for a valid common law marriage. Their importance pertains to proof of the common law marriage, but is not important when the marriage is made per verba de presenti, as was in this case.

The Court in Richard Perry Loving et ux. v. Virginia, 388 U. S. 1, 18 L. Ed. 2d 12, 1010, 87 S. Ct. 1817 states: "Marriage is one of the 'basic civil rights of man; fundamental to our very existence and survival." The Court further said: "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free man."

Serious constitutional questions are involved, Article 4, Section 1 of the Constitution of the United States provides: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings to every other state."

The Fourteenth Amendment to the Federal Constitution provides for equal protection to all persons. To deny a transient the right to be married at common law in Ohio is in violation of this right.

With the advent of the airplane, the automobile and the trailer, the United States is a country whose citizens move freely and often, from one state to another. Since this question involves a large portion of our population, the question in this case should be resolved by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

OPINION OF THE COURT BY JUDGE EDWARD P. HILL, JR.—AFFIRMING

This is an appeal from an order granting appellees summary judgment on the trial of appellant's appeal to the Jefferson Circuit Court from the order of the Jefferson County Court probating a will of Clarence W. Vaughn and refusing to appoint the appellant administratrix of the estate of Clarence W. Vaughn.

The will of Clarence W. Vaughn, regular on its face, was dated January 23, 1963. It left the estate of deceased to a friend and neighbor who was no relation to him.

On July 16, 1966, appellant and the deceased journeyed to the state of Ohio, where common-law marriages are recognized, and registered at a motel as Mr. and Mrs. Clarence W. Vaughn. They were at that time residents of Kentucky.

Appellant says they exchanged mutual vows in marriage without witnesses or solemnization. On the following day, they returned to Kentucky with the appellant regaled in the customary diamond ring and wedding band. Until the death of Clarence, they lived and held themselves out as man and wife.

The chancellor considered only the pleadings and answers to interrogatories addressed to appellant and her attorney. But they established beyond a question that the parties to the so-called attempted marriage in question here were "visitors in Ohio" during the less than 24-hour period of their stay in that state.

We could spend considerable time and space in a prolonged discussion of common-law marriage and related questions which may be interesting and beneficial to students of the law, but preferirng to leave those questions to the text writers and others, we simply say that this state

does not recognize common-law marriage within the boundary lines of this state, but may recognize one legalized by another state. But it takes more than riding across the Ohio River to make one legal.

In Kennedy v. Damron, Ky., 268 S. W. 2d 22, 24 (1954), this court wrote these lines which fit the facts and provide the legal answer to the instant case:

> "Upon the evidence in the case before us, the chancellor was justified in concluding that Mr. Damron and Eula Mae were merely visitors in Ohio, with no abode by which they established themselves as members of the community. It is true they occupied a dwelling for a time, but only in the character of transients, and their holding themselves out as man and wife in Ohio, was principally as to tradesmen with whom they had casual dealings. They did not become an established part of the community."

In Umbenhower v. Labus, 85 Ohio St. 238, 97 N. E. 832, the Ohio Court thus defined a common-law marriage:

> "In agreement of marriage *in praesenti*, when made by parties competent to contract, accompanied and followed by cohabitation as husband and wife, they being so treated and reputed in the community and circle in which they move, establishes a valid marriage at common law."

It is concluded that the claim of common-law marriage fails. It follows that the judgment denying appellant letters of administration is correct and is affirmed.

All concur.

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Attorney for Appellee:
LAWRENCE S. GRAUMAN
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PETITION FOR REHEARING OVERRULED DECEMBER 17, 1971

MANDATE

THE COMMONWEALTH OF KENTUCKY,
The Court of Appeals
Spring Term—May 21, 1971

Elba W. Vaughn, Widow, etc.

v.

William John Hufnagel, Executor, of the Estate of Clarence W. Vaughn, et al

Appeal from a judgment of the Common Pleas Branch, 5th Division, Jefferson Circuit Court

The Court being sufficiently advised, it seems there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

It is further considered that the appellees recover of the appellant their cost herein expended.

A copy—Attest:

DICK VERMILLION, C. C. A.
By John C. Scott, D. C.

Issued December 17, 1971

OFFICIAL CERTIFICATE

I, Paulie Miller, Clerk of Jefferson Circuit Court, in and for the Commonwealth and County aforesaid, do hereby certify that the attached is a full, true and correct copy of Deposition Taken on Written Interrogatories, filed, September 5, 1967; and noted on Civil Docket in action #108480, wherein, Elba W. Vaughn, Appellant v. William J. Hufnagel, et al, Appellees, as appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Court aforesaid, at the city of Louisville, this 25th day of January 1972.

(s) Paulie Miller, Clerk

No. 108480

Jefferson Circuit Court, Common Pleas Branch
Fifth Division

Elba W. Vaughn - - - - - - - Appellant

v.

William J. Hufnagel, et al. - - - - - Appellees

DEPOSITION TAKEN ON WRITTEN INTERROGATORIES

The deposition of Edwin H. Stierle, 1609 Kentucky Home Life Building, Louisville, Kentucky, 40202, taken on written interrogatories propounded by the attorneys for the plaintiff pursuant to notice. Said deposition was taken in the office of Billie Richards, 1609 Kentucky Home Life Building, Louisville, Kentucky, 40202, on August 22, 1967, to be used in accordance with the Kentucky Rules of Civil Procedure.

Edwin H. Stierle, being first duly sworn, stated as follows in answer to said interrogatories:

1. Yes, I presided as Special Judge of the Jefferson County Court in the probate proceedings in the estate of Clarence W. Vaughn, deceased, No. 112590.

2. Yes, Elba Woods Vaughn testified at the probate proceedings that she and Clarence Vaughn exchanged marriage vows in the Cliff View Motel in Cincinnati, Ohio, on July 16, 1966. Whether or not the marriage was consummated at that time is a question of law.

3. Yes, Judge Grauman, counsel for the Hufnagels, questioned Elba Woods Vaughn regarding the so called

common law marriage. Testimony tending to prove the marriage was given on direct examination. Judge Grauman's questions were asked on cross-examination of the witness.

4. Yes, Judge Grauman, prior to examining the witness in regard to the so called common law marriage, stated that he asked the questions without waiving his objections that the evidence was inadmissible under the dead man's statute.

(s) Edwin H. Stierle

State of Kentucky)
County of Jefferson) SS.

I, Billie Richards, a Notary Public within and for the state and county aforesaid, do hereby certify that the foregoing deposition of Edwin H. Stierle was taken before me on August 22, 1967, in my office; that the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth; that the deposition was reduced to writing and was signed and sworn to by the witness; that the foregoing is a full, true and correct transcript of said deposition.

Witness my signature this 22nd day of August, 1967.

My Commission expires: August 5, 1969.

(s) Billie Richards
Notary Public, Jefferson County, Ky.

Supreme Court, U. S.
FILED
MAY 13 1972
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 71-988

ELBA W. VAUGHN, Widow of Decedent,
Clarence W. Vaughn — Petitioner

versus

WILLIAM JOHN HUFNAGEL, Executor
of the Estate of Clarence W. Vaughn
WILLIAM JOHN HUFNAGEL, and
FLORENCE F. HUFNAGEL, His Wife
DAISY P. BURDON
CHESTER E. VAUGHN — Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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ELBA W. VAUGHN, Widow of Decedent,
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v.

WILLIAM JOHN HUFNAGEL, Executor of
the Estate of Clarence W. Vaughn
WILLIAM JOHN HUFNAGEL, and
FLORENCE HUFNAGEL, His Wife
DAISY P. BURDON
CHESTER E. VAUGHN - - - - - *Respondents*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America.

COUNTER-STATEMENT OF THE CASE

Except for self serving and inadmissible declarations by the petitioner, the only proof in this case establishes that the petitioner and the decedent spent one night in an Ohio Motel and returned to Kentucky the next day. The various facets of their cohabitation in

Kentucky as set out in petitioner's brief may be true but are irrelevant.

We must further disagree with the petitioner's statement on page 5 of petitioner's brief which states "The Jefferson County Court held that a common law marriage had been proved in Ohio . . ." The petitioner refers to pages 12 and 13 of her brief. Nothing there or elsewhere establishes such a holding.

ARGUMENT

The petitioner relies on *Meister* v. *Moore,* 96 U. S. 76, 24 L. Ed. 826 and the chain of cases thereafter for comfort. It is true that the Supreme Court has upheld the validity of a common law marriage but only in states where such is not outlawed by State Statute. In the Meister case, *supra,* the Court states:

> "Whatever directions they may give respecting its formation or solemnization, courts have usually held a marriage good at common law to be good notwithstanding the statutes unless they contain express words of nullity."

The Kentucky statute leaves no room for interpretation on this point. Kentucky Revised Statute 402.020 reads, "Marriage is prohibited and void: . . . (4) where not solemnized or contracted in the presence of an authorized person or society."

The petitioner attempts to create a valid common law marriage by combining one night in Ohio with cohabitation thereafter in Kentucky. We accept that the law of Ohio recognizes common law marriages and

that Kentucky should and does give full faith and credit to such an Ohio common law marriage.

However, Ohio does not accept one night in a motel as creating a valid common law marriage. The Kentucky Court of Appeals correctly quoted the Ohio law from *Umbenhower* v. *Labus*, 85 Ohio St. 238, 97 N. E. 832:

> "An agreement of marriage in praesenti, when made by parties competent to contract, accompanied and followed by cohabitation as husband and wife, they being so treated and reputed in the community and circle in which they move, establishes a valid marriage at common law."

When the petitioner and deceased left Ohio they had not qualified a valid common law marriage. Kentucky does not have to accept a status which has failed to blossom into an accepted legal concept in Ohio. There is no public act, record or judicial proceeding in Ohio for which Kentucky could give full faith and credit.

Application of the Fourteenth Amendment calling for equal protection under the law is impossible in this case. The petitioner had as much right as anyone to create a valid common law marriage in Ohio by following the formula set out by the law. No one has been given a right denied to her.

CONCLUSION

No constitutional right of the petitioner has been violated. The petition should be denied.

Respectfully submitted,

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